S.B. Civil Misc. Appeal No.428/2005
Manish Singhi
vs
Bank of Rajasthan Ltd. & Ors.

DATE OF ORDER : - 20.4.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.SS Purohit, for the appellant.

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Heard learned counsel for the appellant.

The appellant is aggrieved against the order of the trial court dated 22.2.2005 by which the trial court dismissed the appellant's application for setting aside the ex-parte decree dated 21st Sept., 2004, which was passed in favour of the respondent no.1 bank. According to learned counsel for the appellant the notice was published in the newspaper 'Rajasthan Patrika' which is circulated in Jodhpur whereas the appellant was residing at Solapur, far away from the Rajasthan and he had no knowledge of such publication. It is also submitted that no more efforts have been made for personal service of the summon upon the appellant despite the fact that the appellant informed the Bank Manager that he is leaving Jodhpur and going to Solapur to earn money, but despite this fact, the respondent no.1-bank got the summon published in newspaper, which is in circulation at Jodhpur only.

I considered the submissions of learned counsel for the appellant. It appears from the facts mentioned in para no.4 of the impugned order that the summons were issued to the appellant and on first summon dated 28.10.2002 there is a report that the appellant was not available at his residence, the summons was offered to his mother, but she refused to take summon and not only that, she misbehaved with the process server also. The second summon was issued on 25th Nov., 2002 at appellant's residence address, but on calling the appellant's mother, she did not come out. It is reported that the process server was not permitted to affix the summon. However, even after all above reports, no ex-parte order was passed and again the summon was issued on 21.1.2003. The summon was offered to the appellant's mother, but she refused to accept and when the process server tried to affix the summon, appellant's mother misbehaved with the process server again. Forth time summon was sent by registered post AD on which there is a report of postman that he is not available at his residence. After making such all efforts, the plaintiff-bank submitted an application for publication of the summon of the plaintiff in the newspaper and, thereafter, the ex-parte decree was passed. It will be worthwhile to mention here that notices of other defendants-guarantors were also served before passing the decree. So far as contention of appellant that he orally informed the Bank Manager that he is leaving Jodhpur for Solapur was not believed by the court below.

In view of the facts mentioned above, this Court is not inclined to interfere in the order passed by the court below.

Learned counsel for the appellant submits that even if appellant has not informed the respondent-bank that he is leaving Jodhpur, still it was the duty of the respondent-bank to search the defendant of a case and should have served the notice. The contention of learned counsel for the appellant proceeds on assumption that there is a finding of fact that he, in fact, left Jodhpur. Not only this, but any enquiry about the fact whether appellant was living at Solapur at relevant time cannot be held in this appeal.

In view of the above, the appeal of the appellant is dismissed.

(Prakash Tatia), J.

c.p.goyal/-